

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REDACTED

ENERGY DIVISION

RESOLUTION E-3883
AUGUST 19, 2004

R E S O L U T I O N

Resolution E-3883. San Diego Gas and Electric Company requests approval for a deferment of the online requirement date of December 31, 2003, to June 30, 2005, for a wind power contract originally authorized under Commission resolution E-3803.

By Advice Letter 1594-E Filed on May 21, 2004.

SUMMARY

SDG&E's request to extend the online start date of a previously-approved wind energy contract is denied.

San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 1594-E on May 21, 2004, requesting Commission approval to modify the required online date from December 31, 2003 to June 30, 2005 for a wind energy contract previously approved under Commission Resolution E-3803.

SDG&E should allow the subject generator to bid in its 2004 Renewable Portfolio Standard Request for Offers.

SDG&E filed AL-1596-E under the interim authority provided in Decision (D.) 02-08-071. Now that the Commission has fully implemented the RPS program, we find no compelling reasons why the proposed contract should be authorized under the interim authority. Instead, in order to avoid potential displacement of other bidders and help ensure an open and competitive solicitation process, SDG&E should consider the subject generator's bid in its 2004 RFO. To the extent SDG&E's current RFO has closed, SDG&E should reopen it and allow the subject generator an opportunity to bid in the solicitation.

Confidential information about the contract should remain confidential if the Commission decides to allow the subject generator to bid in to SDG&E's current RFO.

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C should be kept confidential to provide the generator the same level playing field as those bidding in SDG&E's current RFO.

BACKGROUND

The Commission provided guidance to the utilities on procuring renewable energy resources prior to the full implementation of the Renewable Portfolio Standard (RPS) Program.

Assembly Bill (AB)X11, chaptered on February 1, 2001, granted authority to DWR to buy and then sell retail electric power to the customers of SDG&E, Southern California Edison (SCE), and Pacific Gas and Electric Company (PG&E). It required DWR to enter into contracts for the purchase of electric power to meet the utilities' energy requirements net of existing resources until January 1, 2003.

On July 3, 2002, AB 57 was enrolled¹, adding Section 454.5 to the Public Utilities (PU) Code, to provide guidance to the utilities and the Commission for the procurement of electricity and electricity demand reduction products. The bill requires the Commission to review and adopt a procurement plan for each utility in accordance with specific plan elements and objectives to ensure that no later than January 1, 2003 the utilities resume procurement for those needs that will no longer be met by DWR.

In response to AB 57, the Commission issued D.02-08-071 on August 22, 2002. This decision ordered a separate renewables solicitation by each utility for at least one percent of their actual energy and capacity needs. This is roughly equivalent to the Renewables Portfolio Standard Program (RPS) approach enacted in Senate Bill (SB) 1078² and reflected in AB 57. D.02-08-071 was issued

1. ¹ The provisions of this bill were subsequently chaptered into law on September 24, 2002 in Senate Bill 1976.

2. ² SB 1078, chaptered on September 12, 2002, requires the Commission to establish a program whereby the utilities must purchase a specified minimum percentage of electricity generated by renewable energy resources. The utilities must increase

Footnote continued on next page

in anticipation of SB 1078's passage; therefore the decision's requirements were conformed to the controlling language of the bill.

The Commission required the utilities to establish a Procurement Review Group to analyze and make recommendations pertaining to proposed contracts.

The Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of each utility's:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the RFOs; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

The PRG for SDG&E is comprised of the California Energy Commission (CEC), California Farm Bureau Federation, Department of Water Resources (DWR), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), and Utility Consumers Action Network (UCAN).

In accordance with D.02-08-071, SDG&E sought PRG input with regard to its support of an extension of the required online date. The PRG was supportive of the extension, but urged SDG&E to pursue negotiations and attempt to receive price concessions in return for any extensions. The PRG was updated on the status of the negotiations and type of concessions being discussed; SDG&E provided a summary of the amended provisions and a copy of the executed amendment to the PRG for review on April 27, 2004. After SDG&E answered several questions from PRG members, no PRG member indicated opposition to the amended contract.

their total procurement of eligible renewable energy resources by at least one percent per year so that 20 percent of its retail sales are procured from eligible renewable energy resources by December 31, 2017.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process. Energy Division had to review the modifications independently, and allow for a full protest period before concluding its analysis.

In 2002, the Energy Division reviewed and recommended, and the Commission approved, the subject wind energy contract.

Following the utilities' evaluation of the RFO solicitation process, each utility must file by advice letter its proposed contract(s), documentation supporting procurement process steps and evaluation methodology, and PRG recommendations. As stated in Appendix B of D.02-08-071, approval of the advice letter would constitute a determination by the Commission that costs incurred by the utility under this contract itself and / or under contracts conforming to the procurement process are "reasonable" and "prudent" for purposes of recovery in retail rates under the PU Code for the full term of the contract(s).

The Energy Division examines IOU proposed contracts on multiple grounds: solicitation of the bids, evaluation of the contracts, bid selection, and PRG involvement, and performed a detailed analysis prior to recommending the Commission approve this wind energy contract.

On September 20, 2002, in response to D.02-08-071, SDG&E issued an RFO for renewable capacity and energy products for minimum block sizes of 1 to 10 MW. As a result of this RFO, on November 2, 2002, SDG&E filed AL 1445-E, requesting Commission approval for the renewable energy contracts selected as a result of its renewable RFO. In response to AL 1445-E, Energy Division recommended and the Commission adopted Resolution E-3803 authorizing SDG&E to enter into the wind energy contract subject of this resolution. Contracts authorized by the Commission under D.02-08-071 must be online by December 31, 2003.

SDG&E is requesting an amendment to the original approved contract.

SDG&E is currently requesting the required online date of the original wind energy contract approved under E-3803 be extended, as the provider was unable to meet the requirement to begin delivering power in 2003. SDG&E filed AL 1594-E on May 21, 2004, requesting Commission approval to modify the online requirement date from December 31, 2003 to June 30, 2005.

Recent Commission decisions have implemented the RPS program and SDG&E has initiated its solicitation for 2004.

The Commission has implemented the RPS program via recent Commission decisions³ and the adoption of SDG&E's 2004 renewable procurement plan⁴. Furthermore, the adopt procurement plan granted SDG&E the authority to issue their 2004 RPS RFO, which SDG&E issued on July 1, 2004.

NOTICE

Notice of AL 1594-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter AL 1594-E was not protested.

DISCUSSION

Confidential information about the contract should remain confidential if the Commission decides to allow the subject generator to bid into SDG&E's current RFO.

This resolution contains confidential information, which SDG&E has requested remain redacted in the public version of this resolution. The unredacted version of this resolution will identify the portion of the resolution that SDG&E has requested remain confidential with the text appearing **[underlined in brackets]**. Accordingly, text in the public version of this resolution marked "[REDACTED]" indicates where information remains confidential. Energy Division recommends that upon approval by the Commission, the redacted portion of this resolution,

³ D.03-06-071, D.04-06-013, D.04-06-014, D.04-06-015, and D.04-70-029

⁴ Letter from Energy Division Director (SDGE Plan Appl1.doc), dated June 28, 2004.

which includes pricing information, should not be publicly disclosed to provide the subject generator with the same level playing field as the other potential bidders in SDG&E's RFO.

We have considered whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns. In this instance we agree with Energy Division's recommendation, and thereby maintain the confidentiality of the information marked as [REDACTED] upon approval of this resolution.

Relevant Sections of the Proposed Amended Contract
[REDACTED]

Various factors contributed to the subject wind energy provider not meeting the originally-negotiated online date.

The subject wind energy provider was not able to meet the originally negotiated online date due to several factors as described by SDG&E below:

- The equity and debt participants of the project required changes to the PPA before they would commit to financing the project. Many months were spent developing the necessary language that was finally acceptable to the developers, the financiers of the Project, and SDG&E.
- Relevant provisions related to CAISO's Participating Intermittent Resource Program were challenging to all parties due to delays in implementing the program and the lack of any significant operating history. All were concerned with who would take the imbalance risk and what would happen if the CAISO's Participating Intermittent Resource Program was terminated or modified substantially to the detriment to either party. Many months were spent working out the relevant contract changes.
- According to discussions with Oasis, the completion of the Interconnection Facilities Agreement with Southern California Edison took much longer than anticipated. There was a discussion between Edison, the ISO and the

transmission line owner as to who had jurisdiction over the scheduling of the line. The discussion commenced on July of 2003 and was not resolved until April of 2004.

- The uncertainty that the Production Tax Credits would be extended past the end of 2003 caused Oasis and its equity and debt participants to slow down pursuing the project near the end of 2003.

SDG&E should procure its renewable resources through its RFO process.

As of July 1, 2004, SDG&E initiated an RFO solicitation and bid evaluation process for renewable resources that has been reviewed and approved by the Commission. The goal of this process is to have an open and competitive bid solicitation process, thus ensuring that SDG&E's ratepayers receive the best combination or 'fit' of renewable resources at least cost.

As noted earlier, the Commission previously approved the contract in 2003 when renewable procurement contracts were reviewed under an interim process. That process has been effectively replaced by the issuance of RFOs, and the use of least-cost best-fit criteria by the utilities in determining which contracts to select. The Commission highly values the process it has established for the procurement of renewable energy and it is our desire to have as much renewable energy as possible procured through that process. We conclude there is no compelling reason why the proposed contract should be authorized through a continuance of the interim process when the solicitation process is readily available. In fact, we are concerned that allowing the amended contract to go forward could effectively displace other comparable bidders who would have no opportunity to compete against the proposed contract. Therefore it would be inappropriate to authorize the amended contract as proposed in AL 1594-E.

We make this decision recognizing that by rejecting the contract and directing SDG&E to reopen its RFO to this particular generator, we risk losing a competitive contract (if its price and terms are indeed better for ratepayers than those bid in the RFO), since the delay could force the generator to withdraw the project and the proposed contract. We conclude that the benefit of obtaining a greater portion of SDG&E's renewable portfolio through the open and

transparent solicitation and selection process we have recently adopted outweighs the benefits of approving the contract.

SDG&E should reopen its 2004 request for offers, to give the subject wind energy developer an opportunity to submit a competitive bid.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 311(g)(1) to 8 days. Accordingly, this matter will be placed on the first Commission agenda 16 days prior to the next Commission meeting scheduled for August 19, 2004. By stipulation of all parties, comments shall be filed no later than 5 days following the mailing of this draft resolution. Reply comments will be waived.

SDG&E filed comments on August 16, 2004. In its comments, SDG&E stated that requiring the subject wind energy developer to bid into SDG&E's 2004 RFO will further delay the project beyond the 2005 summer peak period, leading to higher energy prices for their ratepayers. Reasons given for an increase in energy prices to its ratepayers are 1) currently fixed equipment costs will increase, 2) loss of the bonus depreciation incentive provided for in the Economic Recovery Act of 2001 which expires for units not installed by December 31, 2004, 3) nullification of the transmission agreement for the last remaining transmission capacity for the Tehachapi region, and 4) loss of the \$6 million in construction costs already expended on the project.

Energy Division (ED) recognizes the potential for increased costs to the subject wind energy developer if it were required to bid into SDG&E's 2004 RPS RFO; but ED places more weight on the importance of an open and transparent bid process over the benefits of approving the contract.

SDG&E included comments submitted by the wind energy developer as an attachment to its formally filed comments. In the attachment, the developer pointed out the complexity involved in establishing financing when combining new regulatory and procurement processes, and utilizing federal tax incentives while negotiating renewable contracts. The developer stated that the Commission was setting a negative precedent for developers who will need credit support from the utilities or higher rates to offset conditions perceived as a “regulatory risk” and contradictory state policy.

The developer also pointed out that 1) this specific wind energy contract is the only wind facility poised for completion prior to the 2005 summer peak season and 2) due to Commission delays SDG&E’s originally requested effective date of July 8, 2004, was pushed back until present. According to the developer, had the Commission acted on SDG&E’s advice letter in a timely manner, requiring the developer to submit a competitive bid in the current 2004 RFO would not have been perceived by ED as a viable option.

ED recognizes the complexity involved in securing financing and negotiating new renewable energy contracts for all renewable energy developers. ED is not persuaded that these considerations outweigh the importance of an open and transparent bid and selection process. ED would have maintained this position had the advice letter been acted on before July 8.

FINDINGS

1. D.02-08-071 required the utilities to offer Standard Offer 1 (SO1) contracts to certain Qualifying Facilities with a term to extend until execution of the utilities’ long-term procurement plan or December 31, 2003, whichever came first, including renewable solicitations for at least one percent of their actual energy and capacity needs.
2. On September 20, 2002, SDG&E issued a renewable procurement RFO for energy and capacity products for minimum block sizes of 1 to 10 MWs.
3. On December 5, 2002, the Commission adopted Resolution E-3803 in response to SDG&E’s Advice Letter (AL) 1445-E filed on November 4, 2002, requesting authorization to enter into the subject wind energy contracts.

4. SDG&E made a sufficient showing that the wind energy contract, procured under D.02-08-071 and subject of this resolution, is in the ratepayers' interest because they meet SDG&E's obligation to procure renewable resources for prices below the Price Benchmark provided in the decision.
5. On May 21, 2004, SDG&E filed AL 1594-E requesting Commission approval to extend the online requirement date for the subject wind energy contracts.
6. As of July 1, 2004, San Diego Gas and Electric has initiated a request for offers for renewable energy contracts that has been reviewed and approved by the Commission under the Renewable Portfolio Standard Program.
7. San Diego Gas and Electric should use its request for offers for renewable energy contracts to procure its remaining renewable energy annual procurement target.
8. We should deny SDG&E's request for an extension of the wind energy contract's required online date to June 30, 2005.
9. San Diego Gas and Electric should reopen its 2004 request for offers to allow the subject wind energy developer an opportunity to participate.
10. The portions of the resolution marked "[REDACTED]" should not be publicly disclosed upon approval of this resolution.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 1594-E is denied.
2. San Diego Gas and Electric is directed to reopen its 2004 request for offers to allow the wind energy developer, subject to this resolution, an opportunity to submit a competitive bid.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 19, 2004; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director